

REMARKS/ARGUMENTS

The Office action mailed on May 28, 2003 has been carefully reviewed and the above identified amendments have been provided to thoroughly address each of the objections and rejections provided by the examiner in that Office action. In addition, the following remarks are submitted to clarify and explain the importance of the above amendments and to support a finding by the examiner that the claims, as amended, are now in a form warranting allowance of this case. Accordingly, the undersigned respectfully requests reconsideration by the examiner in this case.

At the outset, applicant notes from page 3 of the above-identified Office action that claims 11, 15, 20 and 29-31 are allowed. These claims have been left unamended and should maintain their allowed status.

Also, claims 5 and 7-9 were objected to as being dependent upon a rejected base claim, but were indicated as being allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. With regard to claim 6, from which claims 7-9 depend, it has been rejected under 35 U.S.C. §112, second paragraph, for indefiniteness associated with lack of sufficient antecedent basis for the term "said rails." Claim 5 has been amended to include the requirements of claim 4 and to be placed in independent form. Claim 6 has been amended to remove the offending language ("between said rails") and to be placed in independent form including the limitations of claim 4. Claims 5 and 6 should thus both now be in a form warranting allowable status. Claims 7-9 depend from claim 6, as amended, either directly or through intervening claims. Accordingly, claims 7-9 should now also be in proper form for allowance. Claim 4 has been canceled in that its limitations have now been incorporated into claims 5 and 6 as indicated above.

The examiner had rejected claims 1-4, 10, 12-14, 16-19 and 32-38 under 35 U.S.C. §102(e) as being anticipated by Reible (U.S. Patent No. 6,520,171). The examiner specified in detail the basis for this rejection by citing which portions of the patent to

Reible were deemed by the examiner to teach the requirements of these claims. In particular, the examiner provided that:

"Reible discloses a paint ball loading and firing apparatus, comprising: a gas source 103; an elongate firing chamber 207 having a barrel 102 at a first end and a removable back plug 208 at a second end, said second end open to an exterior of the apparatus when plug 208 is removed (Figs. 1, 2 and 3a); a paint ball loading hole (Fig. 11); and a selectively open gas path between said gas source 103 and said firing chamber 207 (Fig. 1)."

Applicant has carefully considered the examiner's interpretation of the Reible apparatus and compared the Reible apparatus to the claims presented in this application. Based on this careful review, applicant respectfully submits that the examiner has misconstrued the teachings of Reible. Applicant respectfully submits that when Reible is properly construed that it does not anticipate each of the limitations of the claims of this application as required for rejection under §102.

Specifically, and with particular reference to independent claims 1, 14 and 32, applicant notes that the examiner has construed Reible as teaching an "elongate firing chamber 207;" that that firing has "a barrel 102 at a first end;" and "a removable back plug 208 at a second end."

In fact, reference numeral 207 of the Reible patent is not directed to a firing chamber. Rather, Reible uses reference number 207 to identify a "main body 207" (column 9, line 6). This main body 207 taught by Reible is a structure which includes numerous passages, cavities and holes therein (column 9, line 5). The main body 207 is also a structure to which many other structures are attached such as the rear cap 210 (column 9, lines 25 and 26), the fore grip 221 (column 9, lines 28 and 29) and a loader plate 202 (column 9, lines 32 and 33). In essence, the main body 207 is one of the main structures that makes up the Reible apparatus.

Reible does teach providing a firing chamber. However, the Reible firing chamber is not the Reible main body 207. Rather, Reible particularly defines its firing chamber with regard to Fig. 14. Particularly, in reference to Fig. 14 Reible provides "the gas diffuser 237 controls the gas flow before reaching the projectile. The force of the gas causes the projectile to be ejected from the firing chamber, as seen in Fig. 14a" (column 11, lines 24-28, emphasis added). (Note that the reference to "Fig. 14a" appears to be a typographical error which should read "Fig. 14," as there is no "Fig. 14a").

While Reible does not provide a reference number in Fig. 14 to identify which structure operates as the firing chamber, the projectile is clearly shown in Fig. 14 residing in an area directly to the left of the gas diffuser 237. In this orientation, compressed gas coming from the diffuser 237 would cause the projectile (identified with reference numeral 2 and in the form of a circle) to be expelled horizontally to the left as shown in Fig. 14. If the projectile is identified as being "ejected from the firing chamber," then the location where the projectile 2 is shown in Fig. 14 is that region which Reible is referring to as the true firing chamber.

The true firing chamber taught by Reible, and shown directly to the left of the diffuser 237 in Fig. 14, does not include all of the associated elements identified by the examiner in the above-identified Office action as required by the claims. Particularly, the true firing chamber of Reible does have a barrel 102 directly to the left of the firing chamber (see Fig. 1). However, the rear cap 210 taught by Reible (referred to by the examiner as the "removable back plug 208") is not located at an end of the true firing chamber taught by Reible and shown in Fig. 14. Rather, the rear cap 210 of Reible, including a groove 208, is shown in Fig. 2 to the right of the main body 207. With reference to Fig. 3a, as well as Fig. 14, a cavity 307 is shown directly adjacent this rear cap. The rear cap is identified as extending into the cavity 307 (column 9, lines 25 and 26). The cavity 30 is later referred to by Reible as the "storage chamber 307" (column 11, lines 35 and 36). Reible explains in detail how this storage chamber 307 is used to

hold gas before being expelled through the gas diffuser 237 (column 11, lines 23-25). Hence, the rear cap 210 including the groove 208 actually extends into the gas storage chamber 307 of the main body taught by Reible, rather than into the true firing chamber taught by Reible.

Applicant particularly notes that the true firing chamber taught by Reible is not synonymous with or in any way equivalent with the storage chamber required by claims 1, 14 and 32, such that any substitution thereof could logically be made to anticipate the requirement of independent claims 1, 14 and 32 that the firing chamber include an end opposite the barrel with a removable back plug thereon. Rather, Reible teaches the presence of the diffuser 237 at the side of the firing chamber opposite the barrel. Reible does teach a rear cap 210 that is in the storage chamber 307 taught by Reible. However, Reible's provision of a rear cap for its storage chamber is not the same as the requirement of claims 1, 14 and 32 of a back plug in the firing chamber. While plugs and caps may be synonymous, firing chambers and gas storage chambers certainly are not.

Finally, applicant notes that the Court of Appeals for the Federal Circuit has clearly established that "anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim*" *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) emphasis added). With this application, claims 1, 14 and 32 not only require particular elements, such as the firing chamber including the rear end with the back plug, but also require a particular arrangement for these elements. Hence, the mere presence within the Reible patent of a firing chamber and a rear cap is not sufficient. Rather, these elements taught by Reible must be arranged as required within the claims of this application. Because Reible only teaches a rear cap attached to the storage chamber, and not to the true firing chamber taught by Reible, no such anticipation exists.

Accordingly, applicant respectfully submits that independent claims 1, 14 and 32 are not anticipated by Reible and warrant allowable status. Similarly, claims 2, 3, 10, 12, 13, 16-19 and 33-38 depend from these independent claims and thus benefit from the remarks provided above and should also warrant allowable status.

In view of the foregoing, it is respectfully requested that the examiner pass this case to issue. If, upon consideration, the examiner believes further issues remain outstanding or new ones have been generated, the undersigned requests that the examiner call the undersigned to set up a personal or telephone interview with the undersigned to resolve any such remaining issues.

Respectfully Submitted:



Bradley P. Heisler
Applicant's Attorney
Telephone (916) 781-6634
Registration No.: 35,892

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Date